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## NOTICE OF ALLOWANCE AND FEE(S) DUE

720 7590 01/14/2008

OYEN, WIGGS, GREEN & MUTALA LLP  
480 - THE STATION  
601 WEST CORDOVA STREET  
VANCOUVER, BC V6B 1G1  
CANADA

EXAMINER

TOTH, KAREN E

ART UNIT

PAPER NUMBER

3735

DATE MAILED: 01/14/2008

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/616,997

07/11/2003

Stephane Bibian

B564 0001/BMG

2780

TITLE OF INVENTION: METHOD AND APPARATUS FOR THE ESTIMATION OF ANESTHETIC DEPTH USING WAVELET ANALYSIS OF THE ELECTROENCEPHALOGRAM

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$720	\$300	\$0	\$1020	04/14/2008

**THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.**

**THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.**

### HOW TO REPLY TO THIS NOTICE:

#### I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.**

# **PART B - FEE(S) TRANSMITTAL**

**Complete and send this form, together with applicable fee(s), to: Mail Mail Stop ISSUE FEE  
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P.O. Box 1450  
Alexandria, Virginia 22313-1450  
or Fax (571)-273-2885**

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

720 7590 01/14/2008

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480 - THE STATION  
601 WEST CORDOVA STREET  
VANCOUVER, BC V6B 1G1  
CANADA

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

## **Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/616,997 07/11/2003 Stephane Bibian B564 0001/BMG 2780

TITLE OF INVENTION: METHOD AND APPARATUS FOR THE ESTIMATION OF ANESTHETIC DEPTH USING WAVELET ANALYSIS OF THE ELECTROENCEPHALOGRAM

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
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nonprovisional YES \$720 \$300 \$0 \$1020 04/14/2008

EXAMINER	ART UNIT	CLASS-SUBCLASS
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TOTH, KAREN E 3735 600-544000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

(1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 \_\_\_\_\_

(2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 \_\_\_\_\_

3 \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) : ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee  
☐ Publication Fee (No small entity discount permitted)  
☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s); (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.  
☐ Payment by credit card. Form PTO-2038 is attached.  
☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Registration No. \_\_\_\_\_

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,997	07/11/2003	Stephane Bibian	B564 0001/BMG	2780
720	7590	01/14/2008	EXAMINER	
OYEN, WIGGS, GREEN & MUTALA LLP 480 - THE STATION 601 WEST CORDOVA STREET VANCOUVER, BC V6B 1G1 CANADA			TOTH, KAREN E	
			ART UNIT	PAPER NUMBER
			3735	
DATE MAILED: 01/14/2008				

## Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 568 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 568 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

**Notice of Allowability**

Application No.

10/616,997

Examiner

Karen E. Toth

Applicant(s)

BIBIAN ET AL.

Art Unit

3735

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the RCE filed 21 September 2007.
2. ☒ The allowed claim(s) is/are 1,2,4-9,11-16,18,21-23,26,27,30-32,37-40 and 43-50.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date 7/11/03
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_.
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_.

/Robert L. Nasser/  
Primary Examiner, Art Unit 3735

## DETAILED ACTION

### ***Allowable Subject Matter***

1. The following is an examiner's statement of reasons for allowance:

The prior art of record fails to anticipate or make obvious the invention of claims 1, 2, 4-9, 11-16, 18, 21-23, 26, 27, and 30-32, including, *inter-alia*, extracting information from a brain activity signal to evaluate the level of CNS depression in a subject by acquiring at least two reference signals, each corresponding to distinct and extreme CNS states, observing the subject's brain activity to produce an observed signal, applying a wavelet transformation and a statistical function to the observed signal and to the reference signals to produce an observed data set and reference data sets, comparing the observed data set to the reference data set, and using the comparison to compute a numerical value representing the level of CNS depression.

The prior art of record fails to anticipate or make obvious the method of claim 37, including, *inter-alia*, extracting information from a brain activity signal to evaluate the level of CNS depression in a subject by acquiring at least one reference signal, observing the subject's brain activity to produce an observed signal, applying a wavelet transformation and a statistical function to the observed signal to produce an observed data set and to the reference signal to produce a reference data set, comparing the observed data set to the reference data set by using a vector p-norm to compute the difference between sets, and using the comparison to compute a numerical value representing the level of CNS depression.

The prior art of record fails to anticipate or make obvious the system of claims 38 and 43-50, including, *inter-alia*, a device for acquiring a reference signal corresponding to an awake CNS state from a subject, a device for generating a reference signal corresponding to a CNS state of no brain activity, a device for applying a time-frequency transformation and a statistical function to the two reference signals, a device for observing the brain activity of a subject and acquiring a real-time signal, a device for applying the time-frequency transformation and statistical function to the real-time signal, a device for comparing the data set from the reference signals to the data set from the real-time signal using a vector p-norm, and a device for computing numerical values representative of the patient's CNS depression as a result of the comparison.

The prior art of record fails to anticipate or make obvious the structure of claim 39, including, *inter-alia*, a device for acquiring a first reference signal from a subject that corresponds to the awake CNS state, a device for applying a time-frequency transformation and statistical function to the first reference signal to produce an awake reference data set, a device for generating a second reference data set using a mathematical formula of Dirac function form where the set is representative of the CNS state of no brain activity, a device for observing a subject's brain activity and obtaining a real-time signal, a device for applying the time-frequency function and statistical function to the real-time signal to produce an observed data set, a device comparing the observed data set to the two reference data sets, and a device for computing a numerical value representative of the patient's level of CNS depression based on the comparison.

The prior art of record fails to anticipate or make obvious the method of claim 40, including, *inter-alia*, generating a first reference signal corresponding to an awake CNS state using a random noise signal generator function, generating a second reference signal that corresponds to a CNS state with no brain activity using a time series of zero values, selecting a time-frequency transformation function that will yield a set of coefficients when applied to one of the reference signals, selecting a statistical function to apply to the coefficients or a subset thereof that will yield a reference data set that characterizes the distinct CNS state corresponding to the reference signal, applying the time-frequency transformation and statistical function to the two reference signals to produce two reference data sets that distinguish between awake and no brain activity CNS states, observing a patient's brain activity and acquiring an observed real-time signal, applying the time-frequency transformation and statistical function to the observed signal to produce an observed data set, comparing the observed data set to the reference data sets, and computing a numerical value representative of the patient's level of CNS depression.

John'467 discloses a method for evaluating CNS depression comprising acquiring a plurality of reference signals that correspond to CNS states (column 2, lines 59-60); selecting a transformation function to apply to at least one signal (column 4, lines 61-62); selecting a statistical function to apply to the results of the transformation function to yield a reference data set that characterizes the patient's CNS state (column 4, lines 63-67); applying the transformation and statistical functions to the reference signals (column 4, lines 61-67); capturing a real-time brain signal from brain activity

(column 5, lines 7-9); applying the transformation and statistical functions to the real-time signal (column 5, lines 8-10); comparing the real-time data to the reference data (column 5, lines 9-10); and computing a numerical value representative of the patient's CNS state based upon the comparison (column 3, lines 55-67; column 9, line 48 to column 10, line 10). John does not disclose using reference signals that correspond to distinct and extreme states, such as an awake/alert state and one of zero brain activity, nor does John disclose using a vector p-norm for performing the comparison.

Vierto-Oja teaches a method of evaluating CNS depression comprising performing transformation of signals that correspond to CNS states in order to yield a set of coefficients, such as wavelet transformations (paragraph [0111]), since it is well-known in the art to use wavelet transformations when evaluating signals corresponding to CNS states, and the use of wavelet functions is more effective at distinguishing between signal components.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Response to Arguments***

2. Applicant's arguments, see the Request for Continued Examination filed 21 September 2007, with respect to claims 1, 2, 5-9, 11-16, 18, 21-27, 30-32, and 37 have



been fully considered and are persuasive. The rejection of these claims has been withdrawn.

### ***Conclusion***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen E. Toth whose telephone number is 571-272-6824. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert L. Nasser/  
Primary Examiner, Art Unit 3735

Application/Control Number: 10/616,997  
Art Unit: 3735

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